

SUBCHAPTER C—PUBLIC AVAILABILITY AND USE

PART 1250—PUBLIC AVAILABILITY OF NARA ADMINISTRATIVE RECORDS AND INFORMATIONAL MATERIALS

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AUTHORITY: 44 U.S.C. 2104(a); 5 U.S.C. 552; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

SOURCE: 50 FR 27202, July 1, 1985, unless otherwise noted.

§ 1250.1 Scope of part.

This part sets forth policies and procedures concerning the availability to the public of all records and informational materials generated, developed, or held by NARA with respect to:

(a) NARA organization and functions and regulations of general applicability;

(b) NARA final orders and staff manuals; and

(c) Operational and other appropriate agency records.

This part also covers exemptions from disclosure of these records; procedures for the guidance of the public in inspecting and obtaining copies of NARA records; and the service of a subpoena or other legal demand with respect to NARA administrative records.

Subpart A—General Provisions

§ 1250.10 Purpose.

This part implements the provisions of the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, as amended. This part prescribes procedures by which the public may inspect and obtain copies of NARA records under FOIA.

§ 1250.12 Availability of records.

NARA administrative records are available to the greatest extent possible in keeping with the spirit and intent of the FOIA. Requesters should

address their requests to the office designated in § 1250.54. The person making the request need not have a particular interest in the subject matter, nor provide justification for the request except to the extent necessary to determine the requester's category for fee assessment purposes as explained in § 1250.42. The FOIA requirement that records be available to the public refers only to records in existence when the request is submitted. The Act does not require an agency to compile or create information or records in response to a FOIA request.

[52 FR 29519, Aug. 10, 1987]

§ 1250.14 Applying exemptions.

NARA may deny a request for a NARA record if the record falls within an exemption of FOIA as outlined in subpart E of this part. Except when a record is classified or when disclosure would violate any Federal law, the authority to withhold a record is permissive rather than mandatory. NARA will not withhold a record unless there is a compelling reason to do so. In the absence of a compelling reason, NARA will disclose a record although it otherwise is subject to exemption.

§ 1250.16 Records of other agencies.

(a) *Other agencies' records managed by NARA.* The availability of records of other agencies in the physical custody of NARA and records which have been accessioned into the National Archives of the United States and Federal Records Centers is governed by part 1254 of this chapter. (Availability of Records and Donated Historical Materials.)

(b) *Current records of other agencies.* If NARA receives a request to make available current records that are the primary responsibility of another agency, NARA shall refer the request to the agency concerned for appropriate action. NARA shall inform the requestor that NARA has forwarded the request to the responsible agency.

Subpart B—Publication of General Agency Information and Rules in the Federal Register

§ 1250.20 Published information and rules.

In accordance with 5 U.S.C. 552(a)(1), NARA publishes in the FEDERAL REGISTER, for the guidance of the public, the following general information concerning NARA:

(a) A description of its central and field organization and the established places at which, the employees from whom, and the methods whereby the public may obtain information, make submittals or requests, or obtain decisions;

(b) Statements of the general courses and methods by which functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) Rules of procedure, descriptions of forms available or the places where forms may be obtained, and instructions on the scope and content of all papers, reports, and examinations;

(d) Substantive rules of general applicability adopted as authorized by law and statements of general policy or interpretations of general applicability formulated and adopted by NARA;

(e) Each amendment, revision, or repeal of the materials described in this section.

Subpart C—Availability of Orders, Regulations, and Manuals

§ 1250.30 General.

NARA makes available for public inspection and copying the materials described in paragraph (a)(2) of the FOIA (5 U.S.C. 552(a)(2)), which are listed in § 1250.32, and an Index of those materials as described in § 1250.34, at the National Archives Building located at 7th and Pennsylvania Avenue, NW., Washington, DC. Copying services are available at fees specified in § 1250.40.

[52 FR 29519, Aug. 10, 1987]

§ 1250.32 Available materials.

NARA materials available under this subpart C are as follows:

- (a) NARA orders;
- (b) Written statements of NARA policy that are not published in the FEDERAL REGISTER;
- (c) Administrative staff manuals and instructions to staff affecting a member of the public unless these materials are promptly published and copies offered for sale.

§ 1250.34 Index.

NARA will maintain and make available for public inspection and copying current indexes regarding any matter issued, adopted, or promulgated after July 4, 1967, and described in § 1250.32. NARA will publish quarterly and make available copies of each index or supplement thereto. The index will be maintained for public inspection by the Office of Management and Administration, National Archives (NA), Washington, DC 20408. The public may write to the Policy and Program Analysis Division, National Archives (NAA), Washington, DC 20408, to request a copy of the index.

[51 FR 23416, June 27, 1986, as amended at 57 FR 22430, May 28, 1992]

§ 1250.36 Public inspection and copying.

NARA will make records not subject to exemption available at the NARA facility where the records are located during normal working hours (see part 1253 of this chapter), or at an alternative NARA facility as mutually agreed upon by NARA and the requester. NARA will agree to show the originals or a copy of the originals if the originals are located at another NARA facility, make one copy available at a fee, or a combination of these alternatives.

Subpart D—Fees

SOURCE: 52 FR 29519, Aug. 10, 1987, unless otherwise noted.

§ 1250.37 Definitions.

Commercial-use requester means a requester seeking information for a use or purpose that furthers the commer-

cial, trade, or profit interests of the requester or the person on whose behalf the request is made.

Educational-institution request means a request from a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education which operates a program or programs of scholarly research. The request must serve the scholarly research goals of the institution or school rather than the individual goals of the requester. A request from a student in furtherance of the completion of a course of instruction does not qualify as an educational institution request.

Freelance-journalist means an individual who qualifies as a representative of the news media because the individual can demonstrate a solid basis for expecting publication through a news organization, even though not actually in its employ. A publication contract would be the clearest proof of a solid basis, but the individual's past publication history may also be considered in demonstrating this solid basis.

News media representative means a person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of *news*) who make their products available for purchase or subscription by the general public.

Non-commercial scientific institution means an institution that is not operated on a basis that furthers the commercial, trade, or profit interests of any person or organization, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

Other requesters means any individual who is not a commercial-use requester, a representative of the news media, a

freelance-journalist, or one associated with an educational or non-commercial scientific institution whose research activities conform to the definition above. This term does not include requests from records subjects for records about themselves filed in NARA's systems of records; such requests are handled in accordance with 36 CFR part 1202.

§ 1250.38 Search fees.

(a) The search fee is \$10 per hour or fraction thereof when clerical/administrative staff manually search for records responsive to a request, and \$18 per hour or fraction thereof when NARA must use professional staff to manually search for the requested records because clerical/administrative staff would be unable to locate them. The search fee for computerized searches is the wage (plus 16 percent fringe benefits) of the computer operator per hour or fraction thereof plus the actual computer operating costs.

(b) NARA may charge for search time spent in trying to locate NARA records which are responsive to the request regardless of whether or not any responsive records are identified. NARA will not engage in line-by-line search when merely duplicating an entire document is feasible and would prove to be a less expensive and quicker method of complying with the request.

(c) When the search includes non-personnel expenditures to locate and identify requested information (e.g., transport or travel costs, etc.), the applicable fee is the direct cost to NARA.

(d) NARA will charge for the aggregate of all time spent in searching for documents responsive to a series of requests when NARA reasonably believes a requester or group of requesters is dividing a request into a series of requests to evade assessment of applicable fees.

§ 1250.39 Review fees.

(a) NARA will not charge review fees for time spent resolving general legal or policy issues regarding the application of exemptions.

(b) The review fee is \$24 per hour or fraction thereof, for time spent in activities set forth in paragraphs (d)(1), (d)(2), and (d)(3) of this section.

(c) NARA will charge only commercial-use requesters review fees.

(d) NARA may charge for the time spent engaged in the following activities to determine "review time" subject to review fees:

(1) Time spent examining all documents that are responsive to a request to determine whether any portion of any document is exempt from mandatory disclosure regardless of whether any information is ultimately withheld.

(2) Time spent excising information and otherwise preparing records for release (except preparing the copies that will be made available to the requester).

(3) The aggregate of all time spent in reviewing documents to determine whether any portion of any document is permitted to be withheld when NARA reasonably believes that a requester or group of requesters is dividing a request into a series of requests to evade the assessment of applicable fees.

(e) A fee of \$.20 per page will be charged for making working copies of pages from which information must be excised.

§ 1250.40 Reproduction fees.

(a) *Electrostatic reproductions*—(1) *Prepared by NARA staff*. Paper reproductions of NARA paper records made by NARA staff will be furnished for \$.20 a page.

(2) *Self-service*. At NARA facilities with self-service electrostatic copiers, requesters may make reproductions of released documents for \$.10 a page.

(b) *Reproductions from electromagnetic media*. Direct costs to NARA for staff time for programming, computer operations, and printouts or magnetic tape to reproduce the requested data will be charged requesters.

(c) *Other media*. The cost for reproduction of records from or to other media will be provided upon request. NARA will charge the direct costs to NARA of providing the reproduction.

§ 1250.41 Other fees.

(a) *Mailing costs*. Actual postage and shipping costs will be charged when the requester asks for special methods such as express mail.

(b) *Certification.* A fee of \$2.00 will be charged for each certification.

(c) *Interest.* Interest charges on unpaid fees will be charged beginning on the 31st day after billing at the rate prescribed in 31 U.S.C. 3717, and will accrue from the date of the billing.

§ 1250.42 Fees applicable to categories of requesters.

(a) *NARA policy.* (1) NARA will assess fees on the basis of the category of the requester as defined in § 1250.37. The initial request should include sufficient information for NARA to determine the category of the requester. If sufficient information is not provided for NARA to make a determination, NARA will seek clarification from the requester before assigning a requester to a specific category and before beginning to process the request. If a requester disagrees with a NARA category-of-requester determination, this determination may be appealed, following the procedures set forth in § 1250.58.

(2) NARA will not assess fees otherwise chargeable if the aggregate of all applicable fees is less than \$10.

(3) If NARA estimates that total applicable search and reproduction charges are likely to exceed \$25, NARA will notify the requester of the estimated amount of fees, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. The requester will be offered the opportunity to confer with a NARA official with the object of reformulating the request to meet the requester's need at a lower cost.

(4) For those requests eligible for 2 hours free search time, NARA may begin charging for computerized search time once the cost of the search (including the operator time and the cost of operating the computer to process the request) equals the equivalent dollar amount of two hours of a manual search by a clerical/administrative employee.

(b) *Commercial-use requesters.* Commercial-use requesters, as defined in § 1250.37, who make requests for reasonably described records will be assessed the following fees:

- (1) Search fees as set forth in § 1250.38;
- (2) Review fees as set forth in § 1250.39

(3) Reproduction fees as set forth in § 1250.40; and

(4) Other fees as set forth in § 1250.41, as applicable.

(c) *Educational and non-commercial scientific institution requesters.* When NARA receives a request from a qualified educational institution or a non-commercial scientific institution requester, as defined in § 1250.37, for reasonably described records, NARA will assess:

(1) Reproduction costs as set forth in § 1250.40, except the first 100 pages or their equivalent will be provided free; and

(2) Other costs as set forth in § 1250.41, if applicable. NARA will not charge search or review fees.

(d) *Requesters who are qualified representatives of the news media or qualified freelance-journalists.* When NARA receives a request from a qualified representative of the news media or freelance-journalist, as defined in § 1250.37, for reasonably described records, NARA will assess reproduction fees as set forth in § 1250.40, except the first 100 pages or their equivalent will be provided free. NARA will not charge search or review fees.

(e) *Requests from other requesters.* When NARA receives a request from an individual defined as "other requesters" in § 1250.37 for reasonably described records, NARA will assess:

(1) Search fees as set forth in § 1250.38 for any search time in excess of two hours of manual search or its computerized search equivalent;

(2) Reproduction fees as set forth in § 1250.40, as applicable, except the first 100 pages or their equivalent will be provided free; and

(3) Other fees as set forth in § 1250.41, if applicable.

§ 1250.43 Prepayment of fees.

(a) NARA may require prepayment of all fees when:

(1) Applicable fees are likely to exceed \$250, and

(i) The requester has no history of payment;

(ii) After notifying a requester who has a history of prompt payment of FOIA fees of the estimated fees, NARA does not receive satisfactory assurances of full payment: Or

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(2) A requester has previously failed to pay a fee and interest charges within 30 days of the date of billing.

(b) The amount of the prepayment will be the anticipated fees for the current request, and if applicable, any previously assessed fees and any interest which have not been received by NARA.

§ 1250.44 Waiver or reduction of fees.

(a) Any request for waiver or reduction of a fee shall be included in the initial letter requesting access to NARA records under § 1250.54. The waiver or reduction request should explain how release of the requested information is likely to benefit the public by contributing significantly to the public understanding of the operations or activities of the government, and why the information is not primarily in the commercial interest of the requester.

(b) Documents shall be furnished without a fee or at a reduced fee if NARA determines that the information is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(c) If NARA denies a request for a waiver or reduction of a fee, the requester may appeal this denial, following the procedures set forth in § 1250.58.

§ 1250.45 Form of payment.

Requesters shall pay fees by check or money order payable to: "National Archives and Records Administration" and addressed to the official named by NARA in its correspondence.

§ 1250.46 Payment collection.

As provided for in the Debt Collection Act of 1982 (Pub. L. 97-365), NARA may employ collection agencies and may disclose information concerning nonpayment of fees to consumer reporting agencies when fees have not been paid within 31 days of billing.

Subpart E—Described Records

§ 1250.50 General.

(a) Except for records made available in accordance with subparts B and C of this part, NARA promptly will make records available to a requester when

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the request describes the records so as to enable a professional NARA employee to identify and locate the record(s) unless NARA invokes an exemption in accordance with subpart F of this part. NARA will consult with the requester, when necessary, to more specifically identify the requested record(s).

(b) Upon receipt of a request that does not reasonably describe the records requested, NARA may contact the requester to seek a more specific description. The 10-workday time limit set forth in § 1250.56 will not start until NARA receives a request reasonably describing the records.

[50 FR 27202, July 1, 1985, as amended at 52 FR 29521, Aug. 10, 1987]

§ 1250.52 Procedures for making records available.

This section sets forth initial procedures for making requested records available. These procedures do not apply to records of other agencies that have been transferred to NARA in accordance with 44 U.S.C. 2107 and 3103; in those cases, the procedures in part 1254 of this chapter govern.

§ 1250.54 Submission of requests for described records.

For records located in NARA, the requester shall submit a request in writing to the NARA FOIA Officer, National Archives (NAA), Washington, DC 20408. Requests shall include the words "Freedom of Information Request" prominently marked on both the face of the request letter and the envelope. The 10-workday time limit for agency decisions set forth in § 1250.56 begins with receipt of the request by the NARA office which maintains the requested records. A requester who has questions concerning a FOIA request may consult the NARA FOIA Officer.

§ 1250.56 Response to initial request.

NARA shall mail a response to an initial FOIA request within 10 workdays (that is, excluding Saturdays, Sundays, and legal Federal holidays) after receipt of a request by the NARA office that maintains the records. In unusual circumstances, NARA will inform the requester of the agency's need

to extend the time to respond to the request.

§ 1250.58 Appeal with NARA.

(a) A requester who receives a denial of access in whole or in part of a request or who receives a response that no responsive records were found, and who considers the latter response as adverse in nature, may appeal that decision or finding within NARA to the appropriate NARA FOIA Appeal Official. If the denial was signed by the Assistant Archivist for Management and Administration, the appeal shall be addressed to the Deputy Archivist of the United States, National Archives (ND), Washington, DC 20408. If the denial was signed by the Inspector General, the appeal shall be addressed to the Archivist of the United States, National Archives (N), Washington, DC 20408.

(b) The NARA FOIA Appeal Official must receive an appeal no later than 35 calendar days after the date of the NARA letter of denial.

(c) (1) The requester shall appeal in writing. The appeal letter shall include a brief statement of the reason(s):

(i) If an appeal of denial of access, why NARA should release the records, or

(ii) If an appeal of a requester category determination, why the requester should be considered to be a member of a different category, or

(iii) If an appeal of a denial of a fee reduction or waiver request that the requester is not otherwise entitled to, how disclosure of the information is likely to contribute significantly to public understanding of the operations or activities of government and why it is not a request primarily intended to benefit the commercial, trade, or profit interests of the requester, or

(iv) If no responsive records were found and the requester considers this to be an adverse determination, why the requester thinks that the search does not meet the requirements of the FOIA.

(2) The appeal letter shall include the words "Freedom of Information Appeal" on both the face of the appeal letter and the envelope, and the requester shall enclose with the appeal letter a copy of the initial request and denial.

(3) NARA has 20 workdays after receipt of an appeal to make a determination with respect to the appeal. The 20-workday time limit begins when the NARA FOIA Appeal Official receives the appeal.

(d) A requester who has received a denial of an appeal may seek judicial review of NARA's decision in the United States district court in the district in which the requester resides or has a principal place of business, or where the records are situated, or in the District of Columbia.

[50 FR 27202, July 1, 1985, as amended at 51 FR 23416, June 27, 1986; 52 FR 29521, Aug. 10, 1987; 54 FR 32068, Aug. 4, 1989; 57 FR 22430, May 28, 1992]

§ 1250.60 Extension of time limits.

In unusual circumstances the NARA FOIA Appeal Official may extend the time limits prescribed in § 1250.58. If necessary, more than one extension of time may be taken. However, the total extension of time shall not exceed 10 workdays with respect to a particular request. The extension may be divided between the initial and appeal stages or within a single stage. NARA shall provide a written notice to the requester of any extension of time limits.

[50 FR 27197, July 1, 1985, as amended at 54 FR 32068, Aug. 4, 1989]

Subpart F—Exemptions

§ 1250.70 Categories of records exempt from disclosure under the FOIA.

(a) 5 U.S.C. 552(b) provides that the requirements of the FOIA do not apply to matters that are:

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defence or foreign policy and that are, in fact, properly classified under the Executive order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute, other than the Privacy Act, provided that the statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

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(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person that are privileged or confidential;

(5) Interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regula-

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tion or supervision of financial institutions; and

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) NARA will provide any reasonably segregable portion of a record to a requester after deletion of the portions that are exempt under this section.

(c) NARA will invoke no exemption under this section if the requested records would be available under the Privacy Act of 1974 and NARA implementing regulations in part 1202 of this chapter, or if disclosure would cause no demonstrable harm to any public or private interest.

[50 FR 27202, July 1, 1985, as amended at 52 FR 29521, Aug. 10, 1987]

Subpart G—Predisclosure Notification Procedures for Commercial Information

§ 1250.75 Predisclosure notification procedures for commercial information.

(a) *General.* Commercial information provided to NARA shall not be disclosed to the public except in accordance with this subpart.

(b) *Definitions.*

Potentially confidential commercial information means records provided to NARA by a submitter that may contain material exempt from release under 5 U.S.C. 552(b)(4) because disclosure could reasonably be expected to cause the submitter substantial competitive harm.

Submitter means any person or entity providing potentially confidential commercial information to an agency. The term *submitter* includes, but is not limited to, corporations, state governments, and foreign governments.

(c) *Designation of potentially confidential commercial information.* Submitters of commercial information may designate the information as commercially confidential. The designation must:

(1) Be made by the submitter when the information is submitted to NARA or within 30 workdays thereafter;

(2) Specify precisely which information is claimed as commercially confidential;

(3) Be made in good faith;

(4) Be supported by a certification by the submitter that the information has not been published or previously officially disclosed to the public.

(d) *Notice of receipt of a request to release information.* (1) NARA shall give the submitter prompt written notice of receipt of a FOIA request for the submitter's potentially confidential commercial information when:

(i) The submitter, in good faith, has designated the material as commercially confidential in accordance with paragraph (c) of this section; and

(ii) The FOIA request is received within 10 years of the date of submission.

(2) The written notice of receipt of an FOIA request shall either describe the potentially confidential commercial information requested, or provide copies of the records containing the information. The notice shall be mailed to the last known address of the submitter.

(3) When notice is given to a submitter pursuant to this section, NARA shall inform the requester that:

(i) The notice has been sent to the submitter;

(ii) That NARA's response to the request may be delayed beyond the limitations specified in 5 U.S.C. 552(a)(6)(A) and (B) to allow for time to notify the submitter, and to consider any response; and

(iii) That the delay may be considered a denial of access to records and the requester may seek judicial review. However, the requester shall be invited to agree to a voluntary extension of time so that NARA may consider any claims of confidentiality by the submitter.

(e) *Opportunity to object to disclosure.* (1) Through the notice described in paragraph (d) of this section, NARA shall afford a submitter a reasonable amount of time to provide NARA:

(i) A detailed statement of any objections to disclosure. The statement shall specify which information is claimed to be of a confidential commercial nature, and shall specify all grounds for withholding any of the information under the exemptions of the FOIA. If exemption (b)(4) of the FOIA is cited, the statement shall explain how the release of the information can be reasonably expected to cause sub-

stantial competitive harm to the submitter; and

(ii) Certification that the information has not been published or previously disclosed to the public.

(2) The statement provided pursuant to this subsection may itself be subject to disclosure under the FOIA

(f) *Notice of intent to disclose.* (1) NARA shall consider any good faith designations of commercial confidentiality made when the information was initially submitted to NARA, and the submitter's timely objections and specific grounds for nondisclosure received in response to the notice of receipt of a request prior to determining whether to disclose the information in question.

(2) When NARA decides to disclose commercial information over the objections of a submitter, whether in response to a request to release or as the result of an appeal of a denial of access, NARA shall provide the submitter a written notice which:

(i) States the reasons why the submitter's objections were not sustained;

(ii) Describes or contains a copy of the information to be disclosed; and

(iii) Specifies a disclosure date. NARA shall inform the submitter that disclosure will be made on the specified disclosure date, unless barred by court order.

(3) NARA shall inform the requester that such notice has been given to the submitter and of the proposed disclosure date.

(4) When NARA and the submitter are in agreement concerning disclosure, disclosure shall take place as soon as possible.

(5) The notice of receipt of a request shall serve as the notice of intent to disclose when the submitter fails to respond to the initial notice within a reasonable period of time.

(g) *Notice of lawsuit.* NARA will promptly inform the requester and the submitter of any law suit filed by the other concerning possible disclosure.

(h) *Exceptions to notice requirement.* The notice requirements of this section do not apply when:

(1) NARA determines that the information should not be disclosed in accordance with one or more FOIA exemptions;

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(2) The information has been published or officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) NARA has no substantial reason to believe that disclosure would result in competitive harm.

[54 FR 32068, Aug. 4, 1989]

Subpart H—Subpoenas or Other Legal Demands for NARA Administrative Records

§ 1250.80 Service of subpoena or other legal demand for NARA administrative records.

(a) A subpoena duces tecum or other legal demand for the production of NARA administrative records should be addressed to the Director of the Legal Services Staff, National Archives (NXL), Washington, DC 20408, with respect to NARA records.

(b) The Archivist of the United States and the Director of the Legal Services Staff are the only NARA employees authorized to accept, on behalf of NARA, service of a subpoena duces tecum or other legal demands for NARA administrative records.

(c) Regulations concerning service of a subpoena or other legal demand for records accessioned into the National Archives of the United States, records of other agencies in the custody of the Federal records centers, and donated historical materials are located at part 1254 of this chapter.

[50 FR 27202, July 1, 1985. Redesignated at 54 FR 32068, Aug. 4, 1989]

PART 1252—PUBLIC USE OF RECORDS, DONATED HISTORICAL MATERIALS, AND FACILITIES; GENERAL

Sec.

1252.1 Scope.

1252.2 Definitions.

AUTHORITY: 44 U.S.C. 2104(a).

§ 1252.1 Scope.

This subchapter prescribes rules and procedures governing the public use of records and donated historical mate-

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rials in the custody of the National Archives and Records Administration (NARA). Except for part 1250, this subchapter does not apply to current operating records of NARA. This subchapter also prescribes rules and procedures governing the public use of certain NARA facilities.

[59 FR 29191, June 6, 1994]

§ 1252.2 Definitions.

The following definitions are established for terms used in this subchapter.

Archives or archival records mean Federal records that have been determined by NARA to have sufficient historical or other value to warrant their continued preservation by the U.S. Government, and have been transferred to the National Archives of the United States.

Director means the head of a Presidential library, the head of a Presidential Materials Staff, the head of a NARA division, branch, archival center, or unit responsible for servicing archival records, the head of a regional archives, or the head of a Federal records center.

Documents mean, for purposes of part 1254 of this chapter, archives, FRC records, donated historical materials, Nixon Presidential historical materials, and Presidential records, regardless of the media on which they are contained. Document form may include paper, microforms, photographs, sound recordings, motion pictures, maps, drawings, and electronic files.

Donated historical materials means books, correspondence, documents, papers, pamphlets, magnetic tapes, pictures, photographs, plats, maps, films, motion pictures, sound recordings, and other documental media having historical or commemorative value accepted by NARA from a source other than an agency of the U.S. Government.

Federal records center includes the Washington National Records Center, the National Personnel Records Center, and the Federal records centers listed in § 1253.6 of this chapter.